Robert L. LeHane, Esq.
Jennifer D. Raviele, Esq.
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897

Counsel to ADAC, L.P.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: BRUNSCHWIG & FILS, INC., Debtor.	Chapter 11 Case No. 11–22036 (RDD) Hearing Date: January 31, 2011 at 10:00 a.m. EST Objection Deadline: January 26, 2011 at 4:00 p.m. EST[1]

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

LIMITED OBJECTION OF ADAC, L.P. TO THE DEBTOR'S MOTION TO SELL SUBSTANTIALLY ALL OF ITS ASSETS

ADAC, L.P. ("ADAC"), by and through its undersigned counsel, Kelley Drye & Warren LLP, submits this limited objection (the "Limited Objection") to the above-captioned debtor's (the "Debtor") *Motion for Order (I) Scheduling Hearing to Consider (A) Sale of Substantially All of the Debtor's Assets, Free and Clear of All Liens, Claims, and Encumbrances, Subject to Higher and Better Offers, and (B) Assumption and Assignment of Executory Contracts; (II) Scheduling Hearing to Consider Approval of (A) Break-Up Fee/Expense Reimbursement and (B) Bidding Procedures for the Conduct of an Auction and Entering Order Thereon; (III) Fixing a Cure Claim Bar Date with Respect to the Assumption and Assignment of*

1 Extended from January 24, 2011 at 4:00 p.m. EST to January 26, 2011 at 4:00 p.m. EST per agreement of counsel to the Debtor.

Executory Contracts; and (IV) Fixing Manner and Notice of Sale Hearing; (V) Authorizing the Debtor to Sell Assets, Free and Clear of All Liens, Claims, and Encumbrances, Subject to Higher and Better Offers; and (VI) Authorizing Assumption and Assignment of Executory Contracts (the "Motion"). Docket Entry No. 8.

PRELIMINARY STATEMENT

1. The proposed sale timeline set forth in the Motion does not provide sufficient time for ADAC, the landlord at the Debtor's Atlanta, GA showroom, to review the adequate assurance information and assess the viability of the proposed assignee of its leases if the proposed stalking horse bidder is not the winning bidder at the auction. If an alternate bidder has the highest and best bid, that bidder must provide ADAC with adequate assurance of future performance and a reasonable amount of time to review such information. The proposed sale timeline should be modified to provide a reasonable amount of time for ADAC to assess whether the winning bidder has satisfied the requirements of section 365 of the Bankruptcy Code and to prepare and file an objection, if necessary.

2. In addition, the proposed sale timeline should include deadlines by which (i) the Debtor will file a notice of proposed cure amounts for its real property leases; (ii) ADAC will receive the adequate assurance information of any proposed assignee; (iii) ADAC may object to the proposed assignment of its lease to anyone other than the proposed stalking horse bidder.

BACKGROUND

3. On January 12, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court.

4. Since the Petition Date, the Debtor has continued to manage its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. The Debtor leases approximately 11,322 net square feet from ADAC pursuant to a written lease (the "Lease") at the Atlanta Decorative Arts Center located at 351 Peachtree Hills Avenue NE, Atlanta, GA 30305, a shopping center as that term is defined in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

6. On January 12, 2011, the Debtor filed the Motion seeking, among other things, authority to conduct an auction (the "Auction") for the sale (the "Sale") of substantially all of the Debtor's assets to the successful bidder at the Auction (the "Successful Bidder") and to assume and assign its real property leases to the proposed assignee (the "Proposed Assignee").

7. The Motion proposes the following sale timeline (the "Proposed Sale Timeline"):

The Debtor's Proposed Sale Timeline	
02-18-2011	Deadline for landlords to file cure claims.
02-22-2011	Deadline for the proposed stalking horse bidder to file a notice of proposed lease assignments.
03-03-2011	Deadline for alternate bidders (the "Alternate Bidders") to submit bids.
03-07-2011	Auction.
TBD	Deadline to object to sale.
03-09-2011	Hearing to approve sale and assumption and assignment of leases.

ARGUMENT

I. The Debtor And The Proposed Assignee Must Provide Adequate Assurance of Future Performance

8. Shopping center landlords are afforded special statutory protections under the Bankruptcy Code in the form of obtaining adequate assurance of future performance from

any proposed assignee of a real property lease. *See In re Joshua Slocum, Ltd.*, 922 F. 2d 1081, 1086–1087 (3d Cir. 1990); *see also In re Trak Auto Corp.*, 277 B.R. 655 (Bankr. E.D. Va. 2002).

9. In connection with a shopping center lease, adequate assurance of future performance includes adequate assurance–

> (A) of the source of the rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor because the lessee under the lease;
>
> (B) that any percentage rent due under such lease will not decline substantially;
>
> (C) that assumption or assignment of such lease is subject to all of the provisions thereof, including (but not limited to) provisions such as radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and
>
> (D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

11 U.S.C. § 365(b)(3). The Debtor bears the burden of demonstrating adequate assurance of future performance. *See In re Rachel Indus., Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990); *see also In re Lafayette Radio Electronics Corp.*, 12 B.R. 302, 312 (Bankr. E.D.N.Y. 1981).

10. In order to determine whether the requirement of adequate assurance of future performance will be satisfied ADAC and its counsel must be provided, at a minimum, with the following information:

(i) The exact name of the Successful Bidder and the exact name of the entity which is going to be designated as the Proposed Assignee of the Lease;

(ii) The Proposed Assignee’s and/or any guarantor’s audited financial statements (or un-audited, if audited financials are not available) and any supplemental schedules for the calendar or fiscal years ending 2008, 2009, and 2010;

(iii) Any and all documents regarding the Proposed Assignee’s experience in operating in-line wholesale showrooms at design centers;

(iv) The number of stores the Proposed Assignee operates and all trade names that the Proposed Assignee uses;

(v) A statement setting forth the Proposed Assignee's intended use of the premises;

(vi) The Proposed Assignee's 2011 business plan, including sales and cash flow projections; and

(vii) Any financial projections, calculations, and/or financial pro-formas prepared in contemplation of purchasing the Lease.

11. The Debtor's Proposed Sale Timeline severely constricts ADAC's ability to analyze the Proposed Assignee because it does not specify a date certain on which ADAC will be provided with adequate assurance information for the Proposed Assignee. The Proposed Sale Timeline should include a deadline for the Debtor to provide the adequate assurance information with respect to the Stalking Horse Bidder and the Alternative Bidders to ADAC.

II. The Proposed Sale Timeline Deprives ADAC Of Any Meaningful Opportunity To Assess The Proposed Assignee's Adequate Assurance Information

12. Unless the Proposed Sale Timeline is modified as requested herein, ADAC will not know the identity of the Proposed Assignee until, at the earliest, the conclusion of the Auction, or, more likely, the next day. If ADAC contests the assumption and assignment of the Lease to the Proposed Assignee, ADAC will have only one business day to complete the following tasks: (i) assess the Proposed Assignee and its adequate assurance information; (ii) determine whether the Proposed Assignee's use of the premises will violate any radius or use restrictions in the Lease; (iii) conduct discovery; (iv) draft, file, and serve an objection; and (v) prepare for a contested hearing.

13. To resolve this issue, ADAC requests that the deadline for submission of alternative bids be moved back at least one week and bidders be required to provide adequate assurance of future performance to the Debtor with their bids. Immediately after receiving the

adequate assurance information, the Debtor should electronically transmit that information to ADAC and its counsel. This would afford ADAC with a reasonable opportunity to assess, among other things, the adequate assurance information of all of the proposed bidders.

14. ADAC should have a minimum of seven business days after it receives notice of the Proposed Assignee and its adequate assurance information until the hearing on the sale and the assumption and assignment of the Debtor's leases. During this time, ADAC will determine whether the Proposed Assignee and its adequate assurance information are acceptable. In the alternative, if there is a hearing less than seven business days after ADAC receives notice of the Proposed Assignee and its adequate assurance information, then the sale hearing should be a status conference, but only with respect to any contested lease assumption and assignment issues.

15. Bankruptcy Rules 7026 and 7028 through 7037, made applicable to contested matters by Bankruptcy Rule 9014, will apply if ADAC objects to the Proposed Assignee and timely notifies the Debtor. Therefore, at a minimum, ADAC should receive an expedited discovery period of fourteen days or, in the alternative, a status conference at the sale hearing to determine an expedited discovery schedule. After the close of the discovery period, ADAC should have an additional four days within which it may file a supplemental objection to the proposed assignment.

16. In the event of a contested assignment, ADAC requests that the Debtor be required to immediately provide a list of any known witnesses that would testify and a list of any known exhibits that would be put into evidence by the Debtor and/or the Proposed Assignee. In addition, after receiving notice of the Auction results and before the hearing to approve the sale

and assignment of leases, ADAC should be afforded sufficient time to assess the Proposed Assignee and determine whether it contests the proposed assignment of the Lease.

17. ADAC proposes the following modified sale timeline:

ADAC's Proposed Sale Timeline	
02-09-2011	Deadline for the Debtor to file a notice of proposed cure amounts.
02-18-2011	Deadline for landlords to object to proposed cure amounts.
02-22-2011	Deadline for (i) the Stalking Horse Bidder to file a notice of proposed lease assignment, and (ii) provide adequate assurance information to landlords.
02-25-2011 at 12:00 p.m. EST	Deadline for Alternative Bidders to submit their bids and for the Debtor to provide adequate assurance information to landlords.
03-02-2011 at 1:00 p.m. EST	Auction.
03-03-2011 at 12:00 p.m. EST	Deadline for the Debtor to file a notice of auction results.
03-04-2011 at 5:00 p.m. EST	Deadline (i) to object to sale, and (ii) for landlords to object to the assignment of their leases if the Stalking Horse Bidder is the Successful Bidder.
03-08-2011 at 5:00 p.m. EST	Deadline for landlords to object to the assignment of their leases if the Stalking Horse Bidder is not the Successful Bidder.
03-09-2011	Hearing on sale motion; if the Stalking Horse Bidder is not the Successful Bidder, then this hearing should be a status conference, but only with respect to the assumption and assignment of the leases.

18. ADAC's proposed sale schedule reasonably provides the minimally sufficient amount of time that ADAC needs to assess the Proposed Assignee and its adequate assurance information, conduct discovery if ADAC objects to the Proposed Assignee, and to prepare for trial if necessary.

III. The Debtor Must Cure All Outstanding Default Under The Lease, Including Attorneys' Fees And Year-End Adjustments

19. Prior to the assignment of the Lease, the Debtor is required to cure all outstanding defaults under the Lease pursuant to section 365(b)(1) of the Bankruptcy Code. In conjunction with this duty, the Debtor must compensate the ADAC for any actual pecuniary loss,

including the payment of attorneys' fees and year-end adjustments. *See* 11 U.S.C. § 365(b)(1)(B); s*ee also LJC Corp. v. Boyle*, 768 F.2d 1489, 1494-96 (D.C. Cir. 1985*); see also Andrew v. KMR Corp.*, 17 B.R. 438, 439 (Bankr. 9th Cir. 1982); s*ee also In re BAB Enterprises, Inc*., 100 B.R. 982 (Bankr. W.D. Tenn. 1989); s*ee also In re Westview 74th Street Drug Corp.*, 59 B.R. 747, 752-754 (Bankr. S.D.N.Y. 1986); s*ee also In re Ribs of Greenwich Village, Inc*., 57 B.R. 319, 321 (Bankr. S.D.N.Y. 1986). Accordingly, as part of its pecuniary loss, ADAC is entitled to such fees in connection with the Debtor's obligation to cure all monetary defaults under the Lease.

20. The Proposed Sale Timeline does not provide a deadline by which the Debtor must notify ADAC of its proposed cure amount for the Lease. Instead, it provides that ADAC must file a cure claim by February 18, 2011. The Debtor should be required to provide notice of its proposed cure amount for the Lease by February 9, 2011 and, if ADAC objects to the proposed amount, ADAC should be required to file an objection by the February 18, 2011 deadline. This procedure is customary in chapter 11 bankruptcy cases involving the assumption or assumption and assignment of unexpired non-residential real property leases and it should be adopted here.

21. ADAC is currently in discussions with counsel to the Debtor and the Stalking Horse Bidder regarding its concerns with the Motion.

CONCLUSION

WHEREFORE, ADAC respectfully requests that the Court enter an order (i) denying the Motion unless it is modified as set forth above; (ii) modifying the Proposed Sale Timeline as set forth above; and (ii) granting such other relief as the Court deems just and proper.

Dated: New York, New York
January 26, 2011

KELLEY DRYE & WARREN LLP

By: */s/ Robert L. LeHane*
Robert L. LeHane, Esq.
Jennifer D. Raviele, Esq.
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897

Counsel to ADAC, L.P.

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18 years and on January 26, 2011, I (i) electronically filed the *Limited Objection of ADAC, L.P. to the Debtor's Motion to Sell Substantially All of Its Assets* (Docket Entry No. 8) with the Clerk of the Court by using the *CM/ECF* system and (ii) served that document upon the following parties in the manner indicated below:

Via Electronic Mail and First Class Mail

Attn: Alan D. Halperin, Esq. and Robert D. Raicht, Esq.
Halperin Battaglia Raicht, LLP
555 Madison Avenue, 9th Floor
New York, New York 10022

Via First Class Mail

The Honorable Robert D. Drain
United States Bankruptcy Court
300 Quarropas Street
White Plains, NewYork 10601-4140

/s/ Jennifer D. Raviele
Jennifer D. Raviele